

## City of Alexandria, Virginia

## MEMORANDUM

DATE: JANUARY 8, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *SS*

SUBJECT: CONSIDERATION OF TYING FUTURE PTO CERTIFICATES OF  
OCCUPANCY TO COMPLETION OF THE DUKE STREET PEDESTRIAN  
CONCOURSE

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**ISSUE:** City Council consideration of the Duke Street pedestrian concourse and the issuance of future certificates of occupancy (CO's) for the Patent and Trademark Office (PTO).

**RECOMMENDATIONS:** That City Council:

- (1) At this time, not direct the City Manager to withhold future CO's for PTO buildings in the event that the Duke Street concourse is not completed by July 1;
- (2) Continue to monitor the progress of the construction of the Duke Street concourse; and
- (3) If appropriate at a future date because of insufficient progress in the concourse construction and related PTO campus support infrastructure, consider the measures that would need to be undertaken to offset the effects of a further delay in the concourse's completion, which could include the additional mitigation measures described in this memorandum and a delay in the issuance of CO's for PTO buildings.

**BACKGROUND:** On September 23, 2003, City Council reviewed various measures to be undertaken by the Carlyle Development Corporation (CDC) to mitigate for the delayed opening (beyond December 31, 2003) of the Duke Street pedestrian concourse. Council also discussed the \$5,000 a day penalty that would be imposed on CDC if the concourse were not completed by the end of June 2004.

On November 11, 2003, Council reviewed the interim construction milestones that CDC is required to meet during the construction of the concourse, or face penalties of \$3,000 a day.

PTO has begun occupying the first buildings (Buildings C and E, and the east parking garage) in its Alexandria campus. The two office buildings are expected to be fully occupied, with approximately 2,600 employees, by the end of February.

The remaining PTO buildings are still under construction. The townhouses along the front of the east garage are expected to be ready for a CO in early June 2004. The west garage is expected to be ready for a CO in late June 2004. Office Building D is currently scheduled to be ready for a CO in mid-July 2004, and Building A in August 2004. Building B is not expected to be ready for a CO until January 2005. Employees will not begin to move into any office space until approximately three to four weeks after the issuance of a CO.

In a memorandum dated November 3, 2003 (Attachment), Vice Mayor Pepper and Councilmen Smedberg and Krupicka asked the Manager to docket for Council consideration a directive to staff to "formally inform CDC, LCOR, and the PTO ... [that] the City Council will not approve additional Certificates of Occupancy that allow for employee occupancy of the still-to-be-constructed PTO buildings, without the completion of the Duke Street Concourse."

**DISCUSSION:** To date, approximately 1,000 PTO employees have relocated to Alexandria. At this point, staff have not noted any significant safety issues for pedestrian or vehicular traffic within the concourse construction area. Vehicular traffic during the past six weeks has certainly been influenced by the typical travel changes that take place during holiday periods. Nonetheless, observations indicate there has been no increase in vehicular traffic volumes or delay since PTO occupancy began on December 8, and pedestrian crossings of Duke Street have remained steady. Since December 8 the Police Department has assigned staff to direct traffic and ensure pedestrian safety on Duke Street as necessary during rush hour periods. Additional data on pedestrian and vehicular traffic volumes will be obtained during this month, as travel patterns return to normal, non-holiday conditions.

The CDC-provided shuttle service between the PTO campus and King Street Metro station initiated operations on December 8 and has experienced increasing demand, peaking at 133 passenger trips to date. PTO reports that employee participation in its transit subsidy program has remained steady, with no drop in participation during the most recent re-enrollment period. We believe that the minimal vehicular impact of the concourse construction to date is due to the transit subsidy and flexible work hour programs of the PTO, to an effective maintenance of traffic plan for vehicular and pedestrian traffic, and to the successful launch of the PTO-to-King-Street-Metro shuttle.

It is, of course, too early to determine the extent to which the total of the CDC mitigation measures will offset the impacts of the delayed concourse opening. At the same time, it is important to recall the two primary impacts that these measures are intended to mitigate: (1) vehicle-pedestrian conflicts along Duke Street at Dulany and from Dulany to Holland, caused by PTO workers traveling on (rather than under) Duke Street to and from the King Street Metro station, and resulting in safety risks to pedestrians and unacceptable traffic delays along Duke Street; and (2) the switch of PTO employees from "transit user" to "vehicle driver," caused by the absence of the pedestrian concourse and the resulting increased inconvenience to using transit. Though only about 40% of the expected 2,600 PTO employees have now relocated to Buildings C and E, it is significant that neither of these impacts has been experienced to date.

Based on our experience since December 8, staff believe that it is premature to determine, at this time, that CO's for additional PTO buildings need to be withheld, if the concourse is not timely completed, in order to avoid or significantly offset the primary concourse impacts identified above. That determination can be, and we believe is best, made after Buildings C and E are fully occupied with 2,600 employees. Then, the value or benefits of the package of mitigation measures can properly judged, and a reasonable judgment can be made as to whether that package of measures would be sufficient to mitigate the additional impacts (of vehicle-driver conflicts and employee "transit user" to "vehicle driver" switches) that would arise from the occupancy of future PTO buildings without the concourse being in operation.

Even if such additional impacts were found to likely arise, additional mitigation measures would be available to offset them. Staff has considered the additional mitigation efforts that could be implemented to further offset the impacts of a delayed concourse construction were the concourse not completed before the occupancy of other PTO buildings later this year. These measures include:

- (1) Extending the peak periods during which the CDC shuttle provides service at five-minute headways between the King Street Metro Station and PTO.
- (2) Initiating a shuttle service between the Eisenhower Avenue Metro Station and PTO.
- (3) Limiting the number of parking spaces in the west parking garage to the number of PTO employees in the remaining buildings who already drive to work. This is similar to the restriction placed on the certificate of occupancy for the east parking garage.
- (4) Requiring CDC to subsidize the service of the N11/N13 Metrobus routes which provide service from Prince Georges County to the Eisenhower Valley. This is only bus transit service across the Wilson Bridge from Prince Georges County, which is the residence of many PTO employees. The N11/N13 routes are under consideration for possible elimination by WMATA, with a final decision now scheduled for mid-2004. CDC could be required to provide a part of the subsidy needed to keep these routes in service until completion of the Concourse.
- (5) Requiring CDC to provide a transit subsidy, equivalent to the \$100 monthly transit subsidy available to PTO employees, to other residents and tenants of the Carlyle development. This could be funded by increased contributions to the Carlyle TMP until such time as the concourse is completed. This subsidy would encourage increased transit ridership by non-PTO occupants of Carlyle, thus reducing the number of vehicles utilizing Duke Street to access Carlyle.

These additional measures are best reviewed, in our view, at the time it is determined that, in fact, additional negative impacts will likely arise from the occupancy of future PTO buildings without the concourse being in operation.

Finally, in addressing the issue raised in the memorandum from Vice Mayor Pepper and Councilmen Smedberg and Krupicka, I feel that consideration needs to be given to the manner in which the City deals with the businesses and individuals we regulate. Over the past five years, PTO has complied with hundreds, if not thousands, of City ordinances, regulations and approval conditions in planning for the transition of its 7100 person employee work force from Crystal City to Alexandria. In making the numerous contractual and other irrevocable commitments that have been needed for this transition to take place, PTO has relied on those City ordinances, regulations and approval conditions, and more particularly, its compliance with them. None of these ordinances, regulations or conditions informed PTO that it would be unable to, or would be delayed in, the transition to its new Alexandria campus if the Duke Street concourse was not completed.

Commitments made by PTO, in addition to its contractual obligations to LCOR, include the termination of leases in Crystal City, and the execution of contracts for the purchase and delivery of furniture, for the purchase, delivery and installation of IT and related equipment, and for moving furniture, equipment, and related materials from Crystal City to Alexandria -- contracts which, if now altered to account for a delay of only a few months, would cause PTO to incur penalties and increased costs of well over \$6 million.

A decision to withhold otherwise-issuable COs for future PTO buildings, due to the concourse not being completed, would impose these additional costs upon PTO. In addition, and more important, it would well be viewed as being fundamentally inconsistent with what the City works for in our dealings with every community we regulate: a set of rules, processes and practices that will be fairly applied and that, if complied with, will result in City approvals that can be relied upon in making the investments and incurring the obligations required of participants in the commercial world.

For all of these reasons, I ask that the Council adopt the recommendations set out at the beginning of this memorandum. As noted in recommendation #3, if appropriate at a future date because of insufficient progress in the concourse construction and related PTO campus support infrastructure, Council would consider the measures that would need to be undertaken to offset the effects of a further delay in the concourse's completion, which could include the additional mitigation measures described in this memorandum and a delay in the issuance of CO's for PTO buildings.

**FISCAL IMPACT:** None

**ATTACHMENT:** Memorandum from Vice Mayor Pepper and Councilmen Smedberg and Krupicka

**STAFF:**

Richard J. Baier, P.E., Director, T&ES

Tom Culpepper, PhD, P.E., Deputy Director of Transportation, T&ES

Emily A. Baker, P.E., City Engineer, T&ES

Arthur Dahlberg, Director, Code Enforcement



*City of Alexandria, Virginia*  
CITY MANAGER'S OFFICE  
ALEXANDRIA, VA  
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Alexandria, Virginia 22314  
2003 NOV 3 P 2:10



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Mayor

Redella S. Pepper  
Vice Mayor

Members of Council  
Ludwig P. Gaines  
Rob Krupicka  
Andrew H. Macdonald  
Paul C. Smedberg  
Joyce Woodson

Jackie M. Henderson, CMC  
City Clerk and  
Clerk of Council  
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TO: PHIL SUNDERLAND, CITY MANAGER

FROM: DEL PEPPER, VICE MAYOR *RS P*  
ROB KRUPICKA, COUNCILMAN *Rob Krupicka*  
PAUL SMEDBERG, COUNCILMAN *Paul Smedberg*

DATE: NOVEMBER 3, 2003

RE: DUKE STREET CONCOURSE DOCKET ITEM

We are writing to request updates, at the next City Council legislative meeting, on the status of the Duke Street Concourse project, the related mitigation agreement between CDC and the City, and the construction timelines.

As part of this update, we would like to docket a motion that directs staff to formally inform CDC, LCOR, and the PTO of the following: the City Council will not approve additional Certificates of Occupancy that allow for employee occupancy of the still-to-be-constructed PTO buildings, without the completion of the Duke Street Concourse. We believe that planned mitigation measures will not be adequate to support the additional pedestrians resulting from further PTO office openings. The pedestrian risks and traffic congestion caused by more PTO employees crossing Duke Street to and from the King Street Metro station are too serious to ignore.

cc: Mayor and Members of Council

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1-13-04**LCOR****LCOR Incorporated**

Suite 280  
6550 Rock Spring Drive  
Bethesda, MD 20817  
(301) 897-0002  
FAX (301) 897-3713

January 13, 2004

The Honorable Mayor William D. Euille  
And Members of City Council  
City Hall  
301 King Street  
Alexandria, VA 22314

**Re: USPTO at Carlyle**

Dear Mayor and City Councilmembers:

The purpose of this letter is to urge City Council to continue its support of the United States Patent and Trademark Office move to Carlyle. Specifically, we are urging City Council to continue to separate the issue of the Duke Street pedestrian concourse from the issuance of certificates of occupancy for the USPTO buildings for the following reasons:

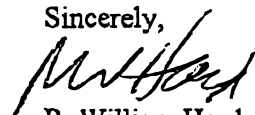
- 1) **Withholding the certificates of occupancy harms the innocent party.** Since the Special Use Permit was first issued in 1990, the construction of the pedestrian concourse has been the responsibility of the land owner (Carlyle Development Corporation). As the owner and developer of the property which was acquired from CDC in 2001 and has been leased to the government, LCOR has no responsibility for the concourse. In fact, LCOR committed to a series of additional transportation and pedestrian improvements when the USPTO project was approved by City Council in March 2000. All of those improvements have been delivered on time or ahead of schedule and to the full satisfaction of City staff.
- 2) **The process of moving from Crystal City to Carlyle is irrevocably in motion.** The GSA has already issued its notice to USPTO's current landlord vacating certain buildings in Crystal City in anticipation of timely delivery of the Carlyle buildings. Leases have been cancelled, furniture orders have been placed, and contracts for moving services executed. The damages resulting from delayed occupancy would run into the millions of dollars.
- 3) **USPTO's commuting patterns will not be adversely impacted by the delayed opening of the pedestrian concourse.** Several factors, including the phased move, the highly flexible working hours of the agency, and the established travel patterns of the employees, make any change in travel modes highly unlikely. Employee arrival and departure times are spread out over several hours, starting at 5:30 A.M. and ending at 10:00 P.M. Of even greater importance is the financial cost of changing from mass transit, which is subsidized at the rate of \$100 per month, to driving and parking, which costs \$100 per month. It simply makes no sense that an individual would increase their

commuting cost from nothing to \$100 per month, plus gas and car maintenance, and contend with traffic congestion. The time lost in traffic would more than offset the additional minute or two of walking time because the concourse is not finished.

- 4) **City Council and staff have put effective mitigation measures in place.** The construction of the concourse is on schedule. The financial penalties for failure are significant and the expense of keeping the mitigation in place is high. Adding an additional penalty through withholding the certificates of occupancy would be neither effective - we and the government cannot change our schedule at this point - no fair.

We all attended and enjoyed last month's building dedication, which was a wonderful occasion celebrating the arrival of USPTO employees in Alexandria. We urge City Council to continue its support of the USPTO project and not enact any measure which could potentially disrupt USPTO's smooth transition from Arlington to Alexandria. I appreciate your consideration.

Sincerely,



R. William Hard

CC: Jo-Anne Barnard, USPTO Chief Financial Officer  
Phil Sunderland, City Manager



Sheraton Suites Alexandria  
801 N. Saint Asaph Street, Alexandria, VA 22314  
Phone: 703-836-4700 Fax: 703-836-0353



# Fax

To: City Council From: John Varghese, GM  
Fax: 703-838-6433 Phone: \_\_\_\_\_  
Phone: \_\_\_\_\_ Date: 1/13/04  
Re: Patent Trade Office Pages: Cover sheet + 7  
☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please pass the following 7 letters  
to:

1. Mayor Euille
2. Vice Mayor Pepper
3. Councilwoman Woodson
4. Councilman Gaines
5. Councilman Krupicka
6. Councilman Macdonald
7. Councilman Smedberg

Thank you!

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**Sheraton Suites**  
ALEXANDRIA  
VIRGINIA

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1-13-04

January 13, 2004

Vice Mayor Del Pepper  
Alexandria City Hall  
301 King Street, Suite #2300  
Alexandria, VA 22314

Dear Vice Mayor Pepper:

As a member of this business community, I was shocked to hear that the Alexandria City Council is planning to withhold additional certificates of occupancy for the U.S. Patent and Trademark Offices.

I must applaud the Council's effort in remedying the pedestrian traffic congestion with the introduction of a shuttle bus and forcing CDC to complete the Tunnel Project with penalties and fines. I agree that CDC must be held to a high performance standard going forward, but to hold the occupancy permit for PTO is an extreme measure that is not warranted.

The news of PTO moving into Alexandria has been received with great hope from the business community. All our projections for 2004 are based on the Patent and Trade Office moving into Alexandria. This is a win-win situation for the city as well as the business community at large for obvious reasons:

- ◆ This is a great opportunity for the City Council to showcase Alexandria as a business-friendly progressive city.
- ◆ The financial fundamentals of the city can be made sound for the long haul using the tax revenue that this project will generate. This is the time to work on developing plans to improve the city's infrastructure and to work on social agendas this city desperately needs.
- ◆ The hospitality business is a great contributor to the city's tax receipt. We will be able to recoup some of the declining revenue from the last couple of years.

My personal feeling is that your efforts to improve the quality of life for all citizens must be applauded. We have already seen positive changes in the city and you are certainly fulfilling the mandate of your elected office. However, denying the occupancy certificate for an entity that is in the middle of moving to our city is not the right move. Please reconsider the damage this will do to the credibility of the city and its business community.

I appreciate the opportunity to share my thoughts with you, as someone who does business here. Continue your efforts in forcing CDC to hold their end of the bargain, but stop short of penalizing the "New Guests" of our city!

Sincerely,

John Varghese,  
General Manager

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1-13-04

I move:

1. That City Council instruct the City Manager to withhold the issuance of all future Certificates of Occupancy (CO's), including temporary and partial CO's, for the following PTO buildings: the townhouses along the front of the east garage building, the west garage building, and Office Buildings A, B, and D, until such time as the construction of the Duke Street concourse has been completed, and the concourse accepted by the City for public use.
2. That in the event the concourse is not completed by June 30, 2004, and for good cause shown, City Council may authorize the City Manager to issue one or more CO's for the above stated PTO buildings, prior to completion of construction and acceptance of the concourse by the City. Good cause means a delay in construction or completion of the concourse which is not attributable in any way to the conduct of the concourse contractor and subcontractors, CDC, or LCOR. In authorizing the issuance of any such CO, Council may require such additional conditions as the Council deems reasonably necessary to mitigate the further delay in construction and completion of the concourse.
3. That the City Manager is instructed to continue to monitor the progress of the construction of the Duke Street Concourse, and to report promptly to Council, in writing, any departure from the published schedule greater than two weeks.
4. That the City Manager inform CDC, LCOR, and the PTO of Council's decision.



<jbutler@nachri.org>

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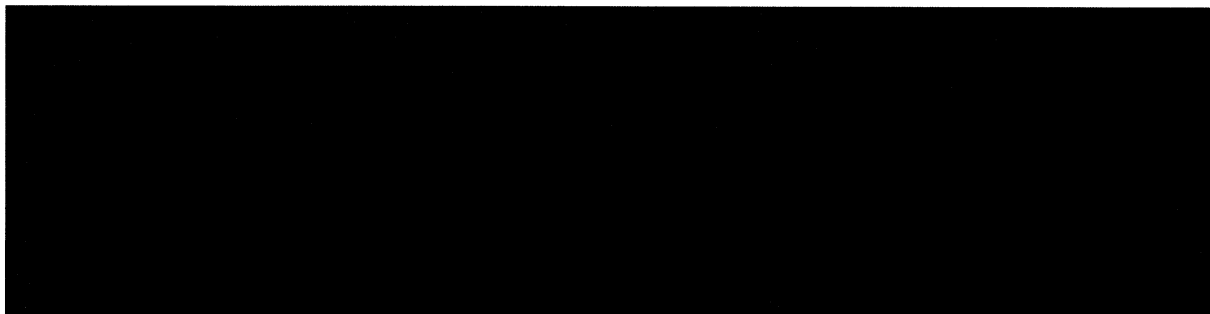
Please respond to jbutler

To: <alexvamayor@aol.com>, <delpepper@aol.com>, <council@joycewoodson.net>, <councilmangaines@aol.com>, <rob@krupicka.com>, <macdonaldcouncil@msn.com>, <paulcsmedberg@aol.com>, <rose.boyd@ci.alexandria.va.us>, <jackie.henderson@ci.alexandria.va.us>

cc:

Subject: City of Alexandria Website Contact Us - EMail for Mayor, Vice-Mayor and Council Members (alexvamayor@aol.com, delpepper@aol.com, council@joycewoodson.net, councilmangaines@aol.com, rob@krupicka.com, macdonaldcouncil@msn.com, paulcsmedberg@aol.com, rose.boyd@ci.alexandria.va.us, jackie.henderson@ci.alexandria.va.us)

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1-13-04



Time: [Tue Jan 13, 2004 13:42:31] IP Address: [65.201.149.51]

Response requested: ☐

**First Name:** Jim

**Last Name:** Butler

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**Email Address:** jbutler@nachri.org; butlers2@erols.com

**Comments:**

The Honorable Mayor and Members of City Council  
City Hall  
301 King Street  
Alexandria, VA 22314

Dear Mayor and Councilmembers:

I am writing regarding Docket Item #26, Consideration of Tying Future PTO Certificates of Occupancy to Completion of the Duke Street Concourse, which you will be considering at tonight's City Council meeting.

The Board of Directors of the Clover-College Park Civic Association (CCPCA) discussed this matter at their meeting on Monday, January 12, 2004 and continue to remain concerned about the timely completion of the Duke Street pedestrian tunnel and the city's process for monitoring and enforcing special use requirements. The CCPCA Board of Directors urges City Council to:

a) schedule a public hearing to obtain citizen comment regarding the Carlyle Development Corporation's failure to comply with the SUP and the enforcement of the Carlyle SUP;

b) retain special counsel to advise City Council regarding the legal and fiscal consequences of withholding future certificates of occupancy for the PTO complex; and

c) retain special counsel to investigate the SUP enforcement process related to the violation of the SUP requirement to complete the concourse by December 31, 2003.

Thank you for your consideration of this matter.

Sincerely,

Jim Butler, President  
Clover-College Park Civic Association

cc: CCPCA Board of Directors  
Jackie Henderson, City Clerk